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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR         | ATTORNEY DOCKET NO.  | CONFIRMATION NO. |
|--|-------------|------------------------------|----------------------|------------------|
| 09/853,196   | 05/11/2001  | Richard Stanley Hajdukiewicz | 7056.032             | 5888             |
| 32361  | 7590        | 12/15/2006                   | EXAMINER             |                  |
| GREENBERG TRAURIG, LLP<br>MET LIFE BUILDING<br>200 PARK AVENUE<br>NEW YORK, NY 10166 |             |                              | RUHL, DENNIS WILLIAM |                  |
|  |             |                              | ART UNIT             | PAPER NUMBER     |
|  |             |                              | 3629                 |                  |

DATE MAILED: 12/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 09/853,196             | HAJDUKIEWICZ ET AL. |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Dennis Ruhl            | 3629                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 October 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 31,37-41,55,61 and 64-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 31,37-41,55,61 and 64-68 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/6/06 has been entered.

Currently claims 31,37-41,55,61,64-68 are pending. The examiner will address applicant's arguments at the end of this office action.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 31,37-41,55,61,64-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCall et al. (6321984) in view of "Weather futures bet will give Tucson forms a hedge against loss".

For claims 31,40,41,55,61,67,68, McCall discloses a system and method for determining a program price for fuel. The program price is the discounted price for fuel that is given to customers who are members of an incentive program. The processor is 204 and memory (i.e. 206) stores program data and usage data. The step of receiving usage data is satisfied by the receiving and storing of data relating to how much the customer has purchased (either in dollars or volume amounts), what kind of incentive program they are in, what kind of discount they are entitled to, etc.. This is data about usage of fuel and their allowed usage of the incentive program; therefore, it is considered to be "usage data" as claimed. The claimed "program sponsor data that includes an amount of a "finder's fee" paid by a program sponsor" is considered to be the discount amount that the customer is entitled to. The discount amount that the customer is entitled to is considered to be the claimed fee amount. With respect to the language about the fee being paid by a program sponsor, applicant is referred to column 12, lines 19-30, where it is disclosed that "*Pertaining to the discounts, a variety of arrangements are contemplated. Some examples entail the funding of the discount or reward by third parties other than the supplier of petroleum*". If a third party is funding the discount, this has been decided in advance, and the fee that they pay can very reasonably be considered a "finder's fee". The discounted amount is paid to the program operator by the program sponsor (the third party). The calculating of the

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program price is done when the system determines who the customer is and retrieves their customer records from the database to determine what kind of discount the customer is entitled based on the purchase of fuel. This data includes the "fee" to be paid by the third party disclosed in column 12 as noted above and "usage data". The guaranteeing of the program price is inherent to McCall. Clearly if a business offers an incentive program such as disclosed by McCall, the intent is to honor the incentive program to further foster good customer relations and customer loyalty. If a customer purchases fuel and gets a discount, then the price has been honored as claimed. The storing of the price on the computer is in McCall because the customer purchase records are stored in the database 206.

McCall does not disclose using the usage data and sponsor fee amount (data related to a fee to be paid by a third party) to develop a financial hedging strategy that can diminish the risk associated with the volatility of fuel prices. The "Weather futures" article discloses the well-known concept of looking to the future to help protect against unnecessary losses due to factors that could be predicted to some extent. The article discloses that a natural gas company can "hedge" itself against lost revenues if a warm winter cuts sales. A hedging strategy for fuel is very old and well known, for example the futures market for oil, which helps reduce the risk due to changing fuel prices and market changes. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the usage data and the program sponsor "finder fee", as well as any other data deemed as necessary or relevant data, to develop a financial hedging strategy to help prevent foreseeable losses due to changing demand

and fuel prices. In the fuel market, any kind of extreme weather changes, or changes due to OPEC, impact the prices in the fuel markets. Developing a strategy that can predict upcoming conditions in the market so that you don't offer too low of fuel prices for the incentive program can protect against losses when the price for fuel goes up considerably and you are taking losses due to too liberal of an incentive program.

For claim 55, in addition to that immediately above, the step of "determining a market indicator relevant to the future price" is what you do when you are developing a financial hedging strategy involving the sale of fuel. You are inherently looking to market indicators that are relevant to the future price for the fuel.

For claims 37,64, the usage data includes things such as how much one must purchase to be able to get a discount (a quantity of fuel), in what time period the purchases and discounts are valid, and the type of fuel the customer has purchased and amounts for those purchases.

For claims 38,65, not disclosed is that multiple prices are calculated for multiple geographic regions. Because many gas stations are franchises that are located over many geographical areas, and in view of the very well known fact that local gas prices vary by geographic region, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method of McCall for franchises that cover a wide geographical region, so that customers of all "Brand X" fuel stations can benefit from the incentive program by fostering more customer loyalty and good customer relations. This results in prices being calculated for multiple geographic regions as claimed.

With respect to claims 39,66, not disclosed is that the hedging strategy includes purchasing futures for fuel. The idea of purchasing "futures" in the fuel market is notoriously old and well known; and official notice is taken. This is a way to try to predict what the market price for fuel is going to be in the future, hence the name "futures". It would have been very obvious to one of ordinary skill in the art at the time the invention was made to have the hedging strategy include "futures" purchases as is well known in the art as a way to protect one from predicted rising prices for fuel.

5. Applicant's arguments filed 10/6/06 have been fully considered but they are not persuasive. Applicant has argued that in McCall, the "fee" that is paid by a third party is not the same as the claimed "finder's fee". The examiner disagrees. In McCall the "fee" paid by the third party (program sponsor) is paid to the program operator as claimed. A fee is a fee, what you call the fee does not change the fact that it is still a fee being paid to the program operator from a program sponsor. This is what McCall discloses. The 103 rejection uses the usage data and the finder's fee data as claimed.

6. This is a RCE of applicant's earlier Application No. 09/853,196. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



DENNIS RUHL  
PRIMARY EXAMINER